IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 379-DB of 2002

Date of Decision :- January 16, 2007

Ram Kumar Kataria ....APPELLANT

VERSUS

State of Punjab ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present:- Mr. T.S.Sangha, Advocate
for the appellant.

Mr. J.S.Dhillon, DAG, Punjab.

MEHTAB S.GILL, J.

This is an appeal against the judgment dated 17.4.2002 of the Additional Sessions Judge, Ludhiana whereby he convicted Ram Kumar Kataria under Sections 302/376 IPC and sentenced him to undergo life imprisonment under Section 302 IPC and to pay a fine of Rs.5,000/-. Under Section 376, the trial Court sentenced him to undergo seven years' rigorous imprisonment and to pay a fine of Rs.3,000/-. In default of

payment of fine, to further undergo one year R.I. and six months R.I. respectively. Both the sentences were to run concurrently.

The case of the prosecution is unfolded by the statement Ex.PG of Jagdish Anand given to Balbir Singh SI (SHO), Police Station Kotwali, Ludhiana at Chowk Ghanta Ghar at 3.45 p.m. on 24.8.1998. Jagdish Anand stated that he is the proprietor of Sartaj hotel, situated in Bhadaur House. On 23.8.98 a man along with a lady came to his hotel at 12.45 p.m. The description of the man was that he was aged about 35 years, Mulla fashioned, height 5'-6", thin body, wheatish complexion. They both requested for a room for their stay, as they stated that they were going to Delhi and could leave at night or in the next morning. They also enquired about the timing of the night bus service. Room No.69 was given to them on rent of Rs.600/-. The male person in entry No.447, dated 23.8.98 at page No.218, gave his address as Ashok Kumar resident of 243/1, Tilak Nagar, New Delhi. Both of them checked into the room. Two cups of tea were ordered and Balbir Singh (waiter) son of Prem Singh, who is resident of District Pouri Garhwal (U.P.), served them. At about 2.00 p.m. two cold drinks were ordered and in the evening, both went to the bazaar and returned at 8.30 p.m. Thereafter, they went into the room. On 24.8.1998 at about 2.00 p.m., Balbir Singh (waiter) went to room No.69, where the couple was checked in and saw that it had not been vacated. The door of the room was locked and the T.V. was on. He reported the matter to Jagdish Anand. Jagdish Anand along with the waiter went to the room and opened the door. They noticed that a dead body of an unknown

lady was lying on the bed and froth was coming out from her mouth. Her face had turned blue. It appeared that the male person named Ashok Kumar, who stayed with her in the hotel, had murdered her by administering her some poisonous substance and thereafter, he fled away. After leaving Balbir Singh waiter to guard the dead body, Jagdish Anand went to the police station to lodge a report. On the basis of this statement, FIR Ex.PW17/2 was recorded on 24.8.1998 at 3.55 p.m. and the special report reached the J.M.I.C., Ludhiana, on the same day at 5.45 p.m.

The prosecution to prove its case brought into the witness box Dr. Karamvir Goel as PW1, Jagdish Anand as PW2, Harminder Singh Draftsman as PW3, Balbir as PW4, Kuldip Singh as PW5, Arun Sadanand as PW6, HC Chamkaur Singh as PW7, SI Manjit Singh as PW8, Jasbir Singh as PW9, Nirmal Singh Tehsildar-cum-Executive Magistrate as PW10, Balwant Rai as PW11, HC Tara Singh as PW12, Constable Jaswant Rai as PW13, Constable Vasakha Singh as PW14, Vijay Kumar as PW15, Anil Bhagat Manager Bank of India as PW16, SI Balbir Singh as PW17, HC Harsukhdev Pal Singh as PW18, Dr. Gurcharan Avasthi as PW19, Kewal Krishan as PW20, Constable Beeru Khan as PW21, Mrs. Seema Sharda as PW22 and Constable Bua Singh as PW23.

Learned counsel for the appellant has argued, that the prosecution has failed to establish, that the accused was in the hotel on the intervening night of 23/24.8.1998. Some man accompanying the deceased, who seemed to be her paramour, came to the hotel, but as the Investigating agency could not catch hold of the unknown man, falsely implicated the

appellant. The identity of the accused was not proved. The entry in the register allegedly made by the appellant was in the name of Ashok Kumar. Police, for the reasons best known to them, did not investigate as to who this Ashok Kumar was. They did not go to the address given on the register. If they had done so, probably they could have reached the actual culprit. Evidence regarding Ashok Kumar should have been collected by the Investigating agency. The test identification parade was not conducted. An application was moved before Nirmal Singh PW10, Executive Magistrate for the test identification parade of the appellant to be conducted, but the appellant refused, for the reason that Jagdish Anand PW2 had stated that he had already seen the accused in the police station. Appellant was justified in not joining the test identification parade. Similarly, Balbir PW4, the waiter has stated, that he saw the appellant in the hospital. Going through the test identification parade would have been fruitless and would have prejudiced the appellant, as Jagdish Anand PW2 and Balbir PW4 had already seen him.

The testimony of Jagdish Anand PW2 is not worthy of any credence. He has stated in his statement before the Court, that he is owner of the hotel and he could identify people who took rooms in his hotel. When cross-examined at certain serial numbers, he could not give any details as to who those persons were. Similarly, the testimony of Mrs. Seema Sharda, the Finger-Prints expert, her statement is also not conclusive, to clinch the identity of the appellant. It was incumbent upon the prosecution, to get on record the signatures of the appellant, so that

they could be compared with the signatures in the hotel register. Similarly, the testimony of Balbir PW4, who is the waiter, is also not creditable, as he also has not established conclusively the identity of the appellant. The recoveries as spelt out by SI Balbir Singh PW17, are not credit worthy. All that is recovered is a gold ring, a gold chain and Rs.10,000/-. These recoveries are only for the purpose of padding of the case of the prosecution.

There is no motive for the commission of the offence. Kuldip Singh, the husband of the deceased has stated, that there was a committee of which the deceased was a member, as she was doing the business of chit funds. Deceased had withdrawn Rs.60,000/- from the bank and the appellant had asked for the money to expand his business.

In the alternative, the learned Counsel has argued that it seems that the appellant was her paramour, who had some sort of an argument and fight with her and it is thereafter that he committed her murder. Something happened all of a sudden and it is thereafter that this occurrence had taken place. The murder does not seem to be pre-planned. The offence under Section 376 IPC is not made out against the appellant if we take it that he was her paramour. Conviction, if any, can be at the most under Section 304 Part I IPC.

Learned counsel for the State has argued, that the medical evidence points towards strangulation and asphyxia, as the face and eyes of the deceased were swollen. The body of the deceased had turned blue. Appellant knew that deceased was coming on 19.8.1998, as her husband

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Kuldip Singh PW5 had rung up the appellant to tell him about that she was coming to visit her brother for Rakhi. The amount of Rs.60,000/- was withdrawn from the bank as per statement of Arun Sadanand PW6, the bank official. Jasbir Singh PW9, the brother of the deceased, had gone along with her to withdraw this amount. Both Jagdish Anand PW2 and Balbir PW4 are independent witnesses. They have identified the appellant. They did not see the appellant before the offer of test identification parade was made by Nirmal Singh, Executive Magistrate PW10 to the accused. Appellant refused to join in the test identification parade, as he was afraid that he would be identified. Semen was present in swabs taken from the deceased. It is a case of rape and murder.

After the appellant was suspected for commission of the offence and was going to be arrested by the police, he tried to commit suicide by taking sulphas tablets. Dr. Gurcharan Avasthi PW19 treated him and his life was saved. This behaviour of the appellant was very strange and in fact points towards his guilt. If he was innocent, there was no need for him to commit suicide. Recoveries of gold chain and ring have been made. "B" is embossed on the locket and chain, it being of Balbir Kaur, deceased.

We have heard the learned counsel for the parties and perused the record with their assistance.

There are two independent witnesses, who are not inimical towards the appellant, nor are they friendly to the complainant party. Both Jagdish Anand PW2, the owner of Sartaj hotel and Balbir PW4, the waiter

who belongs to Pouri Garhwal (U.P.), are independent witnesses. Both have identified the appellant in Court. They had seen the appellant when he came to the hotel not once but several times going in and out of the hotel premises. Balbir PW4 had served them tea and coca-cola. There was no need for them to give a false statement to implicate the appellant.

Jagdish Anand PW2 in his testimony before the Court has stated, that his son Pawan Kumar is the proprietor of Hotel Sartaj. He also supervises the work of the hotel. On 23.8.98, he was sitting on the counter when the appellant along with Balbir Kaur (deceased) checked into the hotel. They made entry No.447 in the register at page No.217 regarding the booking of room No.69. Booking was done in the name of Ashok Kumar with family, 243/1, Tilak Nagar, New Delhi. The entry was written in the hand of the appellant. After having tea and cold drinks, appellant along with Balbir Kaur (deceased) went to the bazaar. On the next day, his waiter Balbir PW4 told him that the lady, who checked in, was lying dead. Similarly, Balbir PW4 has stated, that on 23.8.98 at about 12.45 p.m., accused Ram Kumar Kataria had come to the hotel for booking of one room along with one lady. Room No.69 was allotted to them. He served tea and cold drinks to them. They went to bazar together. On 24.8.98 at about 2.00 p.m. when he went to the room, he saw that the body of the lady was lying there. She was dead. He told everything to Jagdish Anand PW2. This witness has identified the accused. Both these witnesses are independent witnesses. Balbir Singh PW4, who was a crucial witness, has not been cross-examined on the material aspects of the case, his cross-

examination is a very short one and runs into 9 lines only. Both these witnesses have identified the accused.

Arun Sadanand PW6, the official from the bank has stated, that Balbir Kaur w/o Dalip Singh, village Pandhori Rajputan came to the bank branch at Ramgarh, District Kapurthala. She had opened an account with account No.SF/3660. As per the bank record, she withdrew Rs.60,000/- on 22.8.1998 from her account, copy is Ex.PW6/A. SI Balbir Singh PW17 has stated, that out of Rs.60,000/-, Rs.10,000/- were recovered as per the disclosure statement Ex.PW17/10 made by the appellant.

Mrs. Seema Sharda PW22 in her testimony before the Court has stated, that as per her report Ex.PW22/C, when the signatures of the appellant were compared with the writings at Sr. No.217 of the register of Hotel Sartaj, which is Ex.P1, with the standard signatures of Ram Kumar Kataria A1 and A2 on the account opening form Ex.PW16/A, she found that there were similarities in the two sets of writings/signatures. Both the register of Hotel Sartaj Ex.P1 and the bank account opening form Ex.PW16/A were examined with the writing in the register. Though later on in her statement, she has stated that to give a definite opinion, specimen writings of the person concerned in English was needed. Report Ex.PW22/C was also signed by Sh. Balwinder Singh Bhandal, Deputy Director, F.S.L., Punjab, Chandigarh. One thing comes out from the statement of Mrs. Seema Sharda PW22, that both the writings on the hotel register Ex.P1 and on the account opening form Ex.PW16/A matched. The

writing in the register Ex.P1, as stated by Jagdish Anand PW2 and Balbir PW4 was made by the appellant.

It has come in evidence of SI Balbir Singh PW17, that appellant was arrested from Faridkot by SI Manjit Singh PW8, who was deputed to arrest him. Appellant tried to commit suicide. On the disclosure statement of the appellant Ex.PJ, one gold chain with locket and one gold ring in a Dabbi were recovered, gold chain being Ex.P34, gold ring being Ex.P35. On 12.9.1998 also, appellant made a disclosure statement Ex.PL wherein he stated, that he had gone to his sister Gauri at Saharanpur (U.P.), but no recovery was affected. On 14.9.1998 on the disclosure statement Ex.PW17/10 of the appellant, an amount of Rs.10,000/- was recovered from the iron box from his residential house at Faridkot. Appellant feeling the burden of guilt, tried to commit suicide and was taken to D.M.C. Hospital, Ludhiana. He was admitted in the hospital on 28.8.98 at 11.17 p.m. in the emergency ward. Case was of consuming aluminium phosphate. Kuldip Singh PW5, who had gone with the police party, had got him admitted in the hospital. This behaviour of the appellant of trying to commit suicide, showed that there was something, which was burdening him heavily that being the murder of Balbir Kaur.

In the alternative, learned counsel for the appellant has argued, that something had happened at the moment in the night and the appellant then in retaliation committed the murder of Balbir Kaur. No rape had taken place, as it seems that both loved with each other. It seems

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that the appellant was the paramour of Balabir Kaur, deceased. This argument of learned counsel for the appellant does not cut much ice, as semen was found on the swabs taken from the deceased. It seems that the appellant wanted to commit intercourse forcibly and she put up a resistance, which culminated in her murder. While running away he took the cash and gold ornaments, which were recovered from him.

We do not find any infirmity in the judgment of the learned trial Court.

Dismissed.

(MEHTAB S.GILL)
JUDGE

(ARVIND KUMAR)
JUDGE

January 16, 2007
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO